IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 8047 of 2005

Between:

1. Bodapati Aravala Raju, S/o.Venkata Reddy,
R/o.Garagalapalem Village,

Korukonda Mandal, East Godavari District)
2 Bodapati Kondayya, S/o.Venkata Reddy,
R/o.Garagalapalem Village, Korukonda Mandal,

East Godavari District.

..... PETITIONERS

AND

1 The Additional Agent to Government,

Rampachodavaram, East Godavari District.
2 The Special Deputy Collector,

Tribal Welfare, Rampachodavaram,

East Godavari District.
3 The Special Deputy Tahsildar,

Tribal welfare, Devipatnam,

East Godavari District.
4 The Mandal Revenue officer,

Devipatnam Mandal, Devipatnam,

East Godavari District.

5 Kunjam Jagapathi Dora, S/o.Jogi Dora,

Uppayapalem village, Devipatnam,

East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the orders of the 1st respondent in C.M.P.No.1/2005 in C.M.A.No.2/2005 dated 9-3-2005 as highly illegal, arbitrary, unjust, improper, without jurisdiction and consequently set-a-side the same and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: Mr. BADANA.BHASKARA RAO
Counsel for the Respondents No.1 to 4: GP FOR SOCIAL WELFARE
Counsel for the Respondent No.5 : Mr. K.BALAGOPAL.

The Court, at the stage of admission, made the following :

ORDER:

This Writ Petition is filed seeking to declare the orders of the 1st respondent in C.M.P.No.1/2005 in C.M.A.No.2/2005 dated
09-03-2005, as highly illegal, arbitrary, unjust, improper and without jurisdiction and consequently, to set aside the same.

2. Heard the learned counsel for the petitioners, the learned Government Pleader and the learned counsel for the 5th respondent.

3. The learned counsel for the petitioners contended that without giving an opportunity, the Additional Agent to the Government, Rampachodavaram, virtually passed the order, dated 09-03-2005, in C.M.P.No. 1 of 2005 in C.M.A.No.2 of 2005 stating as if the 5th respondent was in possession of the properties and therefore, he prays to set aside the same.

4. On the other hand, the learned Government Pleader for the respondents.1 to 4

contended that the Writ Petition itself is not maintainable since the order under challenge is an interim order. The petitioner can as well agitate his grievances by filing an application to vacate the injunction order before the Additional Agent to the Government and prays to dismiss the Writ Petition.

5. On the other hand, the learned counsel for the 5th respondent contended that the Mandal Revenue Officer conducted an enquiry and it is clear that the 5th respondent encroached into the land. Therefore, the possession of the 5th respondent in the disputed land may be protected.

6. Admittedly, one Kunjam Venkanna Dora filed L.T.R.P.No. 196 of 2004 on the file of the Special Deputy Collector, Tribal Welfare, Rampachodavaram under Section 3 of the Regulation 1/59 A.P.Schedule Areas Land Transfer Relief Act for restoration of the petition schedule land, after ejecting the respondents, and that petition was dismissed. Challenging the same, the third party tribal filed an appeal before the Additional Agent to the Government, who in turn passed an impugned order, which reads as follows:

> "The order dated 30-12-2004 passed by Special Deputy Collector (TW), Rampachodavaram in LTRP No.196/04 is hereby suspended pending disposal of the appeal. The possession of Appeal Scheduled lands with regard to Tribals shall be maintained".

7. The 5th respondent/appellant is not a party to the proceedings in L.T.R.P.No.196 of 2004 on the file of the Special Deputy Collector, Tribal Welfare, Rampachodavaram. Without giving any opportunity to the parties the said order has been passed. Therefore, the principles of natural justice have been violated. Though it is an interim order, since the third party-stranger filed the appeal challenging the order of the Special Deputy Collector, an opportunity should be given to the affected parties before passing any order. Therefore, the order under challenge suffers from serious legal infirmities, as there is violation of principles of natural justice. Therefore, it is liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside the orders, dated 09-03-2005, passed in C.M.P.No. 1 of 2005 in C.M.A.No.2 of 2005, on the file of the learned Additional Agent to Government, Rampachodavaram. The learned

Additional Agent to Government shall pass appropriate orders in C.M.P.No.1 of 2005 in C.M.A.No. 2 of 2005, after affording reasonable opportunities to both the parties and dispose of the same within a period of two weeks from the date of receipt of a copy of this order.

9. With regard to the maintainability of the appeal, it is left open to the parties.

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(K.C.BHANU,J)

13th April, 2005.

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To

1 The Additional Agent to Government,

Rampachodavaram, East Godavari District.

2 The Special Deputy Collector,

Tribal Welfare, Rampachodavar,

East Godavari District.

3 The Special Deputy Tahsildar,

Tribal welfare, Devipatnam,

East Godavari District.

4 The Mandal Revenue officer,

Devipatnam Mandal, Devipatnam,

East Godavari District.

5 Two CCs to the GP for Social Welfare, High Court Buildings,

Hyderabad (O.U.T.) 1) 2 CD copies

6 One CC to MR.BHASKARA RAO

7 One CC to MR.BALAGOPAL

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